ELECTRONIC FUNDS TRANSFER ASSOCIATION

20th ANNIVERSARY

1977-1997

January 6, 1998

Ms. Cynthia L. Johnson
Director, Cash Mgmt. Policy &
Planning Division
U.S. Dept. of the Treasury, FMS
401 14th St., SW, Rm. 420
Washington, DC 20227

Dear Cindy:

Enclosed is EFTA's comment letter concerning 31 CFR Part 208. As we discussed, my office erroneously forwarded a draft copy to you. As you will see, we have not made any changes in content. In the best interests of the Association, I would greatly appreciate your discarding the first letter and replacing it with the enclosed.

Thank you and, should you have any questions, please do not hesitate to contact me at (703) 435-9800.

Sincerely,

H. Kurt Helwig
Executive Director

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ELECTRONIC FUNDS TRANSFER ASSOCIATION
20th ANNIVERSARY
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December 15, 1997

Ms. Cynthia L. Johnson
Director, Cash Management Policy & Planning Division
Financial Management Service
U.S. Department of the Treasury
401 14th Street, S.W., Room 420
Washington, D.C. 20227

Regarding: Comments from the Electronic Funds Transfer Association concerning the Department of the Treasury's Rulemaking 31 CFR Part 208, Management of Federal Agency Disbursements, Federal Register Volume 62, Number 179.

Dear Ms. Johnson:

The Electronic Funds Transfer Association (EFTA) welcomes the opportunity to comment on the proposed rule for mandatory EFT. EFTA is the nations leading non-profit, inter-industry trade association, dedicated to the advancement of electronic payment systems and commerce. The Association's nearly 900 members represent the broad spectrum of perspectives needed to analyze these issues accurately and effectively. Members include the nation's leading financial institutions, EFT networks, card associations, retailers, information processors, equipment, card and software manufacturers and vendors, Internet providers, telecommunications companies, state governments, and Federal agencies.

A list of EFTA Board Members and a list of member companies are attached. Please note that none of the government members of EFTA were involved in the development of these recommendations.

The recommendations contained herein were fully and unanimously endorsed by the EFTA Board of Directors at its December 2, 1997 meeting.

Introduction

The Debt Collection Improvement Act of 1996 mandates that all federal payments made after January 1, 1999 will be made by electronic funds transfer. The Act charges the Treasury Department with responsibility to implement these provisions by ensuring that those individuals required to have a bank account under the Act shall:

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- Have access to a bank account at reasonable cost;
- Be given the same consumer protections with respect to the account as other account holders at the same financial institution; and,
- Be granted a waiver from the Act's EFT requirements, based on hardship or other standards developed by the Secretary.

Implementation of these provisions, now referred to as EFT '99, raises a number of issues for the government, federal benefit recipients and financial institutions. This commentary examines these issues and their implications with regard to implementation of the provisions of the Act. EFTA believes that definition of the following concepts is critical:

- Account services and alternative technologies;
- Service availability; and,
- Reasonable cost.

Each of these issues has significant implications with regard to the provisions of the Act. Their collective significance is amplified by the fact that they are interrelated. The minimum level of services included in the account will determine the cost that Treasury must judge "reasonable". Requirements for certain services will determine the operational capabilities that prospective providers will need, and may influence service availability. Mandatory participation requires broad availability of service in the market and raises questions concerning recipient rights to choice and privacy in personal financial services.

EFTA believes that these issues can best be addressed by offering recipients the widest possible choice in a free market. The proposed rules take a significant first step in creating such an environment by providing recipients liberal waiver provisions that promote recipient choice. EFTA believes the rules can be similarly structured to address additional implementation issues by promoting choice in a free market. Based on the analysis presented in these comments, EFTA recommends that the final rules consider the following provisions:

1. Allow the market to determine a minimum level of account service that qualifies for receipt of federal benefits. Minimum services should include:

    - Electronic access with a single on-line debit card;
    - Unlimited ACH deposits;
    - ATM withdrawal capability;
    - Balance inquiry capability; and,
    - POS transactions with cash back privileges determined by merchant policy.

    Accounts such as these, referred to as Electronic Transaction Accounts (ETA's), are well within the operational capability of virtually any insured depository financial institution. This market approach invites industry-wide participation that ensures broad market coverage at competitive prices and terms offering recipients a wide range of choice in account services.

2. Account providers should be free to offer enhanced electronic transaction services at prices and terms acceptable to the recipient.

3. Treasury's objective in procuring electronic transaction services on a regional or national basis should be to establish the account of last resort. Procurement based on competitive bids provides a market rendering of "reasonable cost". Recipients would then be free to choose account services based on the value proposition provided by the free market when compared to government procured services.

These recommendations, if adopted in the Final Rule, will promote free market choice in implementing the Act. The process dynamics they create, along with the waiver policy proposed by Treasury, address substantive issues confronting implementation. Government intervention, though contemplated by the Act, will be the remedy of last resort.

EFTA Recommendations

On behalf of its members, EFTA urges Treasury to adopt the following recommendations in its final rule.

Account Services

The recommended guidelines concur with the concept of an ETA held by an insured depository institution. The recommended guidelines further include leveraging existing infrastructure and encouraging free market competition to deliver account services at reasonable costs.

- **Leveraging financial institution policies and infrastructure.** EFTA recommends that financial institutions provide the electronic transaction accounts (ETAs) to which Federal payments are made, for the reasons outlined in the proposed rules, e.g., account protection through deposit insurance, safety and soundness in the account management and payment process, fiduciary responsibilities, etc. However, financial institutions should be permitted to deliver the safety and soundness of such accounts at a reasonable price that makes economic sense for them.

- **Leveraging existing EFT policies and infrastructure.** Convenient cash access is a key objective for Treasury. Regional and national EFT networks provide an existing infrastructure that delivers established cash access points in stores and at ATMs, using a financial institution-issued debit card with an EFT network brand. Use of standard commercial EFT network infrastructure and pricing, provides receipts with immediate access to the tens of thousands of ATMs and point of sale (POS) locations within their service area. As EFT networks expand their points of access to support government EBT initiatives, cash access will become more convenient and ubiquitous for recipients in underserved areas. Through cooperative efforts between the Treasury-designated payment agents and the regional EFT networks, additional access points can be deployed.

- **Encouraging free market dynamics and competition in delivering creative and reasonable cost accounts.** EFTA recommends that while the account is held and serviced by financial institutions, distribution for customer account acquisition and maintenance may be provided either by the financial institution (e.g., local branches, by phone or mail) or through non-financial institution outlets working cooperatively with the financial institution.

  These same locations would serve as alternative and supplemental access points for cash, in addition to the traditional financial institution branch ATMs, EFT network ATMs and POS locations. Treasury should encourage free market competition and cooperation in enabling financial institutions to team up with non-financial retail outlets to provide expanded ETA access.

Account Provided By Treasury

The following comments respond to the questions at 62 CFR 48721 and 48722.

- **Should Treasury make available a debit card-based account to individuals who are required to receive Federal payments by EFT and who do not have an account of their own with a financial institution?**

  Yes. PIN based debit card accounts owned by a financial institution provide the most secure, convenient and reliable payment capability. EFT network participation provides immediate access to hundreds of thousands of ATM, point-of-banking, and POS locations across the nation. For example, the success of EBT in the Northeast exemplifies the ease of implementation and convenience offered to EBT cardholders in securing cash and paying for purchases using their EBT card through the regional EFT network.

- **Is it more important to have the lowest-cost account that will comply with the law, or should the account offer more features than just deposit and electronic withdrawal, even if the recipient incurs greater cost?**

  Many recipients do not currently have accounts with financial institutions due to lack of need or price sensitivities. Those who have chosen to receive federal payment via an ETA must be provided the option to receive these benefits at the lowest reasonable cost available. Financial institutions choosing to participate should provide low-cost, electronic accounts with standard minimum features defined by the marketplace.

The cost of the account to the recipient must enable financial institutions to support their business case. At their discretion, account providers should have the option to add features and options to the minimum account and charge explicitly for incremental services rendered at reasonable market rates, so long as the recipient is permitted to select the basic benefit account without additional features. Charges for additional services and transactions should be explicitly disclosed initially and on an ongoing basis in accordance with Regulation E.

The account providers should work directly with Treasury to examine the existing cost structure of paper vs. electronic benefits and determine how cost offsets are equitably distributed.

- **Should the cost of the account to the recipient be the most important factor for selecting the account structure and/or the account providers; or should the account structure be designed to meet other objectives? What is an appropriate standard by which to weigh tradeoffs between the increased costs and additional account features?**

The recipient should be allowed to determine whether cost is the most important factor in selecting the account structure or provider. If the same minimum feature account is offered nationwide, recipients can select any provider in their service area and be assured of the same basic service. Those recipients that perceive incremental value in additional services can select among the account providers that support additional features, choosing those providers according to the features desired and cost sensitivity. Full disclosure must be made to the recipient regarding the account options available.

As a reference document, the Federal Reserve Bank Functional Cost and Profit Analysis (FCA) provides an approximation of the costs for account maintenance and transaction costs within the commercial bank, and thrift and credit union industries. It provides a general benchmark that may be helpful in estimating costs, but does not fully represent financial institutions of all sizes.

- **Should the account be structured to provide only a basic withdrawal service at the lowest possible cost, with additional service charges for additional features, or should the account offer a range of services at a fixed monthly cost, even if greater than the cost of a basic account?**

EFTA recommends that the ETA structure should be a basic electronic account provided, owned and managed by a financial institution and accessed through both financial institution and non-financial institution access points. Treasury will credit the account with the ACH credit; the consumer will debit the account electronically through a self-service (e.g., ATM) or attendant-assisted access device (e.g., point-of-banking or point-of-sale). ETA services and fees should be explicitly and clearly disclosed in accordance with Regulation E. Additional services (e.g., deposits, savings, checking, etc.), may be offered at the financial institution's option, and may be selected at the recipient's option, though any additional fees must be clearly disclosed.

- **How many withdrawals should be included in the base price of the account?**

  Financial institutions should encourage recipients to depend upon the safety and soundness of the ETA by encouraging recipients to keep their money in their ETA . As such, it is the opinion of EFTA that the marketplace can best determine specific account features, such as withdrawals.

- **Should the account terms address the charges imposed by automated teller machine owners other than the account provider?**

  No. The ETA holder will be subject to the same access fees as a regular financial institution customer for any services rendered above and beyond those supported by the basic account, consistent with the principle of equal treatment provided by the statute.

- **Should the account structure provide for additional electronic or non-electronic deposits within the basic monthly service charge? If so, what number of deposits?**

  The basic ETA should permit unlimited ACH deposits, but no paper deposits, ACH withdrawals, or check access. These are features that increase the cost and risk to the financial institution are value-added services provided by the financial institution. Pricing would be at the discretion of the financial institution, subject to the discipline of the market as established by competing institutions. Again, ETA services and fees should be explicitly and clearly disclosed in accordance with Regulation E. As recipients desire additional features associated with more traditional checking accounts, they should be migrated to such accounts at the option of the recipient and the institution in accordance with its risk parameters.

- **Should the account provide for some number of third party payments, such as rent or utilities, and should they be priced in the basic monthly service charge?**

  No. Third party payments should be a value-added feature totally separate from the ETA offering. Such value-added features would be available to the recipient at clearly disclosed fees.

- **Should the account include savings features? How would such a capability operate? Would additional fee withdrawals or the capability to accept deposits other than the Federal payment act to foster savings by the recipient?**

  No. Again, a savings account is a value-added and elective feature to the existing financial institution relationship, but is not part of the basic ETA offering. Account providers could opt, at their discretion, to offer a savings account feature that would be priced subject to the discipline of the market as established by competing institutions.

- **How important is a broad geographic reach to meeting the access objectives that most recipients will want? How should Treasury best meet access needs in underserved areas?**

  Within the recipients' service area, cash access options are extremely important. Broader geographic access to cash is less important for all, but still important for some recipients. ETA card participation in regional EFT networks provides broad access points to network ATMs and point-of-sale merchant locations across multiple states. This includes not only grocery stores but also US Post Offices and neighborhood check cashing outlets, who are deploying EFT network terminals for recipient cash access. EBT service providers and regional EFT networks are also providing significant cash access points in underserved areas through merchant participation in their regional EBT programs.

- **Should access to the account be provided at outlets in addition to those normally offered by the financial institution providing the account? For example, should arrangements be permitted under which third parties may offer other means by which a recipient may, in effect, withdraw funds from the account. If yes, should there be a restriction on where additional access may be provided or under what terms it can be offered?**

  Yes. Recipients should have the option to access their accounts through a combination of outlets, including the account providers branch ATMs, ATMs of their network-affiliated financial institutions, merchant locations (primarily grocery store merchants, who provide cash back to network cardholders), and non-financial institution third parties. As indicated in the previous question, non-financial institution outlets, e.g., check casher, post office, etc. become important cash access points as they become part of the commercial network infrastructure.

  In terms of restrictions, non-financial institution outlets should be subject to a predefined set of rules regarding clear and explicit disclosure of fees.

- **If additional access is offered through arrangements with third parties, should the cost of this access be included in the pricing proposal in the competitive bid process?**

- No. ETA should be serviced in the commercial market at the same prices and terms available to holders of similar accounts.

- **Which account design would provide the appropriate opportunity for non-financial institutions to participate in the delivery of services to Federal payment recipients?**

Non-financial institutions would deploy terminals that would be sponsored into the regional EFT network. The account-holding financial institution would participate in the regional EFT network by branding their ETA cards with the regional EFT network brand (e.g., HONOR, NYCE, MAC, STAR, CashStation, etc.). The ETA cardholder would bring their card to the non-financial institution terminal to access his or her ETA .

Service Availability

Implementation of the EFT '99 mandate raises serious issues with respect to service availability and market coverage. Implementation will require a massive campaign to register recipients who do not accept direct deposit today. Implementation of the Act will require that Treasury address the following minimum requirements:

- Establish minimum account services and ensure that services are available to all recipients;
- Determine "reasonable cost" for account services;
- Sign non-direct deposit recipients to accept direct deposit;
- Assist unbanked recipients in obtaining bank accounts;
- Educate and train new direct deposit participants and newly banked recipients in the use of the service; and,
- Ensure that all account information is properly recorded.

In specifying required account services Treasury will, to a significant extent, define the operational capabilities required of prospective providers. These specifications can have the effect of increasing or decreasing the provider population and market coverage. EFTA has recommended an approach to account services that assures the broadest possible provider participation and market coverage to ensure maximum accessibility to the recipient.

The proposed rule suggests that Treasury will procure electronic transaction account services through a regional bidding process (IEI). This approach is likely to place a premium on the bidder's market coverage, at minimum introducing a large institution bias into the process and, at worst, possibly precluding small institution participation. Reduced participation limits recipient choice and reduces market coverage. Treasury procured ETA services should therefore be viewed as the account of last resort.

Reasonable Cost

The Act specifically charges Treasury with responsibility to assure that recipients have access to account services at "reasonable cost". This is of course a highly subjective analysis that can become a very slippery slope. Financial institutions operate at varying cost structures by virtue of their size, scale, specialization and service orientation (personal vs. automated). What is reasonable cost for one institution, may not be reasonable (profitable) for another. These same dynamics yield a wide range of value propositions (combinations of service and price) to the customer. Promoting the broadest possible participation in providing account services produces the widest range of choice in value propositions. It can be argued that a competitive market will produce account services at value propositions acceptable to the recipient, however Treasury is left to administer the provisions of the Act.

The rule proposes a bid process to establish a competitive, presumably reasonable, cost structure. This provides a market-based alternative to some administrative and perhaps arbitrary determination of "reasonable cost". EFTA believes there is a role for this process in establishing the lowest possible cost for the minimum level of service. Government procured service should not, however, preempt the market as the primary source of ETA services.

Finally, broad-based participation in providing account services spreads the cost of administrative requirements (sign-up, training etc.) across the financial services industry rather than concentrating these costs on the resources of a relatively few successful bidders.

Conclusion:

EFTA strongly supports the implementation of EFT '99 and feels that a competitive marketplace will provide recipients with the greatest number of access points at the best possible price. EFTA applauds the work of Treasury in implementing this Act and we look forward to working together to facilitate your continued efforts.

Sincerely,

H. Kurt Helwig
Executive Director